



**Medical Quality Assurance Commission
Friday June 1, 2007
Business Meeting Minutes**

Medical Commission Members

Kenneth Cogen, MD, 2nd Vice Chair
Frederick H. Dore, Jr., MD
Ellen Harder, PA-C
Clifford Herman, MD- Absent
Chelle Moat, MD
Rogelio Ruvalcaba, MD--Absent
Samuel Selinger, MD, 1st Vice Chair
William Gotthold, MD
Venkataraman Sambasivan, MD --Absent
Athalia Clower, PA-C
Cabell Tennis, Public Member, Chair

Les Burger, MD
Susan Harvey, MD--Absent
Hampton Irwin, MD
Judith Page, Public Member
Theresa Elders, Public Member
Judy Tobin, Public Member
Thomas Green, MD
Bruce Cullen, MD
Linda Ruiz, Public Member
Frank Hensley, Public Member

Department of Health Staff:

Blake Maresh, Executive Director
Maryella Jansen, Deputy Exec Director
Cindy Hamilton, Compliance Officer
Karl Hoehn, Legal Services Manager
Dani Newman Acting Disciplinary Manager

Beverly Thomas, Program Manager
George Heye, MD Medical Consultant
Michael Farrell, Staff Attorney
Mike Weisman, Staff Attorney

Others in Attendance

Pamela Anderson, AAG
John Arveson, Washington State Medical Association

Kim O'Neal, AAG

BUSINESS MEETING

CALL TO ORDER

Commission Chair Cabell Tennis, JD called the meeting of Washington State Medical Quality assurance Commission (MQAC) to order at 08:00 a.m. on June 1, 2007 at the Holiday Inn Select, One South Grady Way, Renton, WA 9803

1.0 CHAIR REPORT

The Chair opened the meeting with his report. He reminded the Commission of the purpose of their work established by the legislature of the Commission's purpose and authority which is "to regulate the practice of medicine, insuring the competency and quality of all the professionals who have been placed under our jurisdiction."

The Chair reminded the Commission that they had established task forces on negotiating a joint operating agreement, finance and budget, continuing competency of physicians and physician assistants, sanctioning guidelines, new rules for office-based surgery, and non-surgical cosmetic procedures. He stated that these task forces enable and strengthen the Commission's role in the regulation of the practice of medicine to insure public safety and professional excellence.

The Chair reported that several of the Commission members were able to attend the annual meeting of the Federation of State Medical Boards in San Francisco, California in May. He indicated that Ellen Harder, PA-C, will report on this later on the agenda and reminded the Commission of the presentation by representatives of FSMB at luncheon the day before.

The Chair reported that the Commission had recently found out that staff attorney Michael Bahn had been preemptively removed from the work of the Commission. Mr. Bahn's Commission cases under his care were reassigned. He stated Mr. Bahn is now working for non-board and commission tasks under the Secretary of Health. The Chair stated this was a complete surprise and felt that there are serious concerns about this sudden and unexpected action. He reported three concerns for the Commission:

1. That there was no consultation with the Chair or Executive Committee with respect to the impact this action would make on the Commission's work.
2. This unexpected action has resulted in severe consequences to cases in progress, especially some complex matters that have been a long time in development. Apparently none of the responding Commission members who are responsible for these cases were consulted either, a major offense to public safety.
3. This action raises once again the question of the relationship of the Department of Health to the Commission. Is this relationship an interdependent, collaborative one, or rather it is a hierarchical order in which the Department is the ultimate authority?

The Chair stated that the first two issues are in the past and beyond our reach and remedy and that the Commission will hold an executive session with Karl Hoehn, the Legal Services Manager, to invite his comments on this action and his responses to the Commission's concerns. He said the third issue presents the most important matter for the future of the Commission. The Chair reported that to the Executive Committee it is clear that unless the issue of the relationship between the Commission and the Department is clarified, our work will continue to be reduced in its effectiveness and so represent a risk to the public and the medical profession.

2.0 CONSENT AGENDA

The consent agenda contained the following items for approval:

- 2.1** Agenda for June 1, 2007, was amended to add the AAG Report and the Executive Session.
- 2.2** Minutes from the April 13, 2007, business meeting
- 2.3** Ratifications of Licenses

MOTION: The Chair entertained a motion to approve the consent agenda as amended. The motion was seconded and approved.

3.0 COMMITTEE REPORTS

Public Policy Committee

3.1 Moving Cases from Intake to Investigations MD2007-01

Ms. Thomas reported the proposed policy on Moving Cases from Intake to Investigations has been approved by the Department of Health and is ready for adoption. Ms. Thomas reported that the proposed policy has removed the prohibitive language that would not allow the Case Management Team to close any case should there be a disciplinary panel of three allowed by statute to make disciplinary decisions. Ellen Harder, PA-C, Policy Committee Chair, reported the Committee's recommendation to adopt the policy as proposed.

MOTION: The Chair entertained a motion to adopt the policy as proposed. The motion was seconded and approved.

3.2 Begin the Rule Process for the Safe and Effective Analgesia and Anesthesia Administration in Office-Based Surgical Settings as it relates to Physician Assistants.

Ms. Thomas reported it recently came to her attention that there needs to be a CR101 to begin rules for physician assistants that will accompany the rulemaking process for physicians regarding Safe and Effective Analgesia and Anesthesia Administration in Office-Based Surgical Settings.

MOTION: The Chair entertained a motion to begin the rules process for Safe and Effective Analgesia and Anesthesia Administration in Office-Based Surgical Settings as it relates to Physician Assistants. The motion was seconded and approved.

3.3 Interpretive Statement on WAC 246-919-370 in the Credentialing of Practitioners who have Retired or Not Practiced for an Extended Amount of Time.

Ms. Thomas reported that the drafted policy will be brought back to the Policy Committee for further discussion. She reported that the Committee had determined that the proposal will be for two years that is consistent with the Dental rules. Blake Maresh, Executive Director, added that it was also consistent with the Federation of State Medical Boards recommendation for two years out of practice.

ACTION: For information only. The Policy Committee will continue to develop the policy to bring back at a future date.

3.4 Guidelines for Self-Prescribing and Prescribing for Family Members

Ms. Thomas reported getting several calls on an on-going basis from practitioners as to whether or not the Commission should write a policy for guidance. She

reported that there are policies from the American Medical Association Code of Ethics Guidelines, Washington State Medical Association, and other organizations; however, it would be beneficial for staff to have the Commission's own policy for licensees to refer to when asked. Dr. Moat reported that the recommendation is for the Commission to create its own written policy on prescribing and possibly treatment.

MOTION: The Chair entertained a motion to create a policy or guideline on prescribing and treatment of for family members and self-prescribing. Delegated to the policy committee to research and create a policy to bring back. The Policy Committee will consider and make a recommendation whether or not to develop guidelines for physicians self-prescribing and prescribing for family members. The motioned was seconded and approved.

3.5 Department of Licensing Proposed Rules for Estheticians

Ms. Thomas reported on a recent email she had received regarding an esthetician using a prescriptive device that is not a laser or similar devices. She realized that the proposed Department of Licensing (DOL) rules might inadvertently be construed to allow an esthetician to use "any medical devices considered prescriptive by the FDA if under the delegation and supervision of a physician."

The Commission was aware of the initial concept of the proposed DOL rules; however, it had recently come to the attention of the Commission that the revised proposal might unintentionally be broader than LLRP devices, as in the Commission's rules. Mr. Farrell read a draft letter to the DOL which suggested edits to the rule language to specifically limit its intent to LLRP devices. Pam Anderson, AAG, asked to work with Mr. Farrell on the language before it is sent or delivered to the Department of Licensing. Dr. Selinger asked the Commission to consider approving the draft letter to be sent to DOL.

MOTION: The Chair entertained a motion to authorize Mr. Farrell, with Ms. Anderson consultation, to create a letter, similar to the initial draft letter of Mike Farrell, to be sent to DOL on their proposed rules. The motion was seconded and approved.

4.0 TASK GROUP REPORTS

4.1 Joint Operating Agreement Task Group – Frank Hensley, Chair

Mr. Hensley reported on the JOA meeting. He indicated that the focus was important to the agreement. Mr. Hensley reported that there was quite a discussion about the communication between the DOH and Commission on many issues. He indicated that Mr. Maresh recommended an interest-based negotiation with a mediator to potentially improve relations between the DOH and Commission. He briefly described the "Walk in the Woods" model practiced by certain faculty at Harvard University, and he reported that he believes there is interest on the part of DOH management to pursue such an approach. The

Commission members added information that this would be a good path. The Chair recommended something like this be done.

ACTION: For information only.

4.2 Finance – Les Burger, MD, Chair

Dr. Burger reported on the Finance report. He reported that Mr. Maresh will forward the Commission's budget expenditures to the task force on a monthly basis and quarterly to the Commission as a whole.

He reported that they had collected information from Commission members what they believed should focus on and prioritized to help a business plan. Dr. Burger shared the prioritized list:

- Communication Improvement Efforts
 - internally with HPQA, DOH
 - externally with legislature
 - externally with Washington State Medical Association and Washington Academy of Physician Assistants
 - externally with public
 - complainants feedback -possibly a survey
- Quality of Care improvement efforts
 - continuing education
 - competency
 - mailing of law books or Law on CDs to practitioners
 - development of additional tools, e.g., letter of concern, interview
- Increase monetary penalties
 - Explore the possibility to require insurers to report claims (of certain threshold) against licensees when such claims are first received
 - Explore and resolve issue of insurers refusing to insure physicians/physician assistants if MQAC takes various actions against licensee
 - Explore and resolve issue of hospitals terminating privileges of physicians/physician assistants against whom MQAC has taken various actions

Other suggestions mentioned for consideration:

- Getting access to the University of Washington Medical School Library for research.
- Consider the increase of the Assistant Attorney General's cost associated with any new project or rules.
- Consider the cost saving to use scanning and imaging to save on the volume of paper the Commission gets.

Dr. Burger proposed the business plan be put together and shared with the Commission. Dr. Burger concluded by stating the Commission should spend some time at the October workshop creating a business plan.

ACTION: For information only.

4.3 Continuing Competency– Chelle Moat, MD, Chair

Dr. Moat reported task group members had received a binder with several articles and reference materials regarding continuing education or competency for review. She indicated that this project will take some time to make any possible recommendations for rule or policy changes. Dr. Moat reported continuing education and competency is being considered by the Federation of State Medical Boards. Dr. Green volunteered to be part of this task group and has an interest in creating a continuing medical education summit to include all representatives. She indicated that Ms. Thomas will send a binder of the information to anyone interested in joining the committee.

ACTION: For information only.

4.4 Sanction Guidelines – Judy Tobin, Public Member, Chair

Ms. Tobin reported that they had not met yet but that Athalia Clower, PA-C and she has been working on what the current process is and collecting information.

ACTION: For information only.

4.5 Office Based Surgery Rules – Hampton Irwin, MD, Chair

Dr. Irwin reported that Ms. Thomas had put meetings together. He referred to Ms. Thomas as to the specifics of the meetings.

Ms. Thomas reported meeting with the Board of Osteopathic Physicians and Surgeons and the Podiatric Medical Board regarding the Office Based surgery rules efforts of the Commission. She reported after the Office Based Surgery presentation each board is in agreement to work closely with the Commission in any rule development for their boards as well to be consistent in the approach. She indicated that the last meeting was representation of the boards and with Byron Plan from Facilities Services and Licensing.

ACTION: For information only.

4.6 Non-Surgical Cosmetic Procedures Rules – Sam Selinger, MD, Chair

Dr. Selinger reported attending the first public rules workshop for the proposed rules on non-surgical cosmetic procedures. He indicated that the workshop was attended by estheticians, physicians, physician assistants, Washington State Medical Association, Board of Cosmetology, and naturopathic physicians.

Dr. Selinger stated that there were some questions regarding the PowerPoint presentation, but overall was well received by the constituents. He indicated there will be another public rules workshop in Spokane and anticipates the same interest.

ACTION: For information only.

5.0 OTHER BUSINESS

5.1 Follow-up Discussion to 2006 Legislation Regarding Legible Prescription Writing

Dr. Robertson reported recent legislation will increase the renewal fees by a small portion to go to the University of Washington which allows access for physicians to the UW Medical School library. He recommended the Commission create a task group to meet with the UW medical School librarian to help select out of the 400 potential resource materials out of 4000 available for access.

ACTION: For discussion information only.

Dr. Robertson reported on his follow-ups on the anti-scribbling law and found that it is not being enforced very well. Some hospitals are fining the practitioner a \$500 for violation of the law. Dr. Robertson asked the Commission to consider a pilot project on complaints received on illegible prescriptions that will allow Dr. Robertson to work with the provider and mentor the individual.

ACTION: The Chair deferred the subject matter to the Policy Committee for consideration.

5.2 Report by the Nomination Committee for the 2007 Election for the Chair, 1st Vice-Chair and 2nd Vice-Chair.

Dr. Moat reported the Nominating Committee will report on candidates identified thus far for the Commission's leadership election at the July 13, 2007, business meeting. At this time Cabell Tennis, J.D., Chair, Sam Selinger, MD, Judy Tobin, and Les Burger, MD have indicated they are interested in being considered. Dr. Moat stated if there were other members interested, to let her know.

ACTION: For discussion and information only.

5.3 Reinstatement of the Physician Assistant Advisory Committee

Ms. Thomas reported on a Physician Assistant Task Group meeting in April regarding physician assistants' rules and regulations or issues. She stated the physician assistant rules are truly outdated and need to come up today's standards of the practice of medicine. She recommended the Commission reinstate the Physician Assistant Advisory Committee. Dr. Moat asked about whether these are public meetings and are connected with the Commission. Ms. Thomas indicated that they are public meetings and would typically be convened in concert with Commission meetings.

MOTION: The Chair entertained a motion to reinstate the Physician Assistant Advisory to work on physician assistant rules and policies. The motion was seconded and approved.

5.4 Legislation

Mr. Maresh stated for the interest of time he deferred the report until another time.

5.5 Disciplinary Performance Measures

Karl Hoehn, Legal Services Manager, reported that the information in the packet was presented at the February meeting and was asked to come back to answer any questions. Dr. Moat asked a couple questions on the calculation of the carry forward numbers from one biennium to the next. She asked if they could redo the data now that some huge cases have been closed. He indicated that they will try to accommodate any specific data requests the Commission is interested in. She is concerned that there are more cases that are taking longer. Mr. Hoehn indicated that the Yoshinaka court ruling in August 2005 did slow down cases.

Dr. Burger asked what the importance or purpose of the data. Mr. Hoehn reported that this data is for the performance measures of the Government Management, Accountability and Performance reports (GMAP) reports to the Governor. Dr. Moat suggested that the Commission get the timelines of how long each case takes to close to see the performance on a case-by-case basis.

ACTION: For discussion and information only.

EXECUTIVE SESSION: The Chair called for an executive session with Mr. Hoehn to discuss personnel issues according to the open public meetings act.

6.0 ADJOURNMENT

The Chair called the meeting back into open session. He stated the Commission has determined to write a letter to Secretary Mary Selecky. The Chair then called the meeting is adjourned.

Respectfully submitted by:

Beverly A. Thomas, Program Manager

Approved July 13, 2007

Cabell Tennis, JD, Chair
Medical Quality Assurance Commission